आयकर अपीलीय अधिकरण, ए, न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, **'A '** (SMC) BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./I.T.A. No. 1245/CHNY/2023
निर्धारण वर्ष/Assessment year : 2016-2017.

Smt. Saravanan Priya No.2B, Saraswathi Symphony Apartments ,Gandhi Nagar, 4th Main Road, Adyar, Chennai 600 020.	**Vs.**	The Income Tax Officer, Non Corporate Ward 15(4) Chennai.
[PAN ATLPP 6426F] **(अपीलार्थी/Appellant)**		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. G. Baskar, Advocate.
प्रत्यर्थी की ओर से /Respondent by : Shri ARV Sreenivasan, Addl CIT

सुनवाई की तारीख/Date of Hearing : 20.02.2024
घोषणा की तारीख /Date of Pronouncement : 20.02.2024

आदेश/ O R D E R

This appeal by assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057421537 (1), dated 26.10.2023. The assessment was framed by the Income Tax Officer, Non

Corporate Ward 15(4), Chennai for the assessment year 2016-2017, u/s.143(3) of the Income Tax Act, 1961 (in short ''the Act') dated 24.03.2020.

2. First we deal with the grounds raised by the assessee on merits i.e. estimate of fair market value made solely based only on the guideline value of the property over the fair market value. For this, assessee has raised grounds 4 and 5.

> *''4. Fair Market Value (FMV) to be considered:*
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> *4.1. The CIT(A) erred in failing to delete the addition of Rs.26,96,500/- as the same was made by the AO by solely relying on the Guideline Value of the property over the FMV.*
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> *4.2. The appellant having purchased the property for its FMV, the impugned addition is incorrect, unwarranted and is to be deleted in full.*
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> *5. Negligible variation:*
>
> *5.1. The CIT(A) erred in failing to delete the addition made u/s.56(2)(vii)(b) of the Act as there is only a negligible variation between the actual purchase consideration and the value adopted by the stamp authorities / the DVO.*
>
> *5.2. The difference being negligible, in consideration of the other factors also, the impugned addition is to be deleted in full'.*

3. Brief facts of the case are that assessee filed her return of income for the relevant assessment year 2016-2017 on 16.09.2016. The assessee's case was selected for limited scrutiny under CASS to verify ''whether investment and income relating to properties are duly disclosed". Consequently, a notice u/s.143(2) of the Act was issued on 05.07.2017. The ld. AO on perusal of the sale deed for purchase of property dated 08.02.2016 in document no.277/2016 noted that assessee jointly with her husband Shri. Saravanan has purchased vacant land admeasuring 5.147 grounds (12352.80 sq.ft.) together with AC shed erected thereon comprised in Old Paimash Nos. 290, 291, 292 and 293, R.S.No.311/3 and 312/1, as per Patta S.No.311/3B and 312/17, as per Patta No.382, New Survey No.312/17A situated at Venkateswara Colony 13th link Road, Old No.141, New No.111, Kottivakkam Village previously Tambaram Taluk, presently Sholinganallur Taluk Kancheepuram Dist. (Presently within the limits of Corporation of Chennai) for a consideration of Rs. 3,75,00,000/-. Assessee has also incurred expenditure on account of stamp duty, registration charges, additional stamp duty and amount collected in SRO's office on 16.06.2016, aggregating to Rs.35,57,276/-. Thereby the ld. Assessing Officer required the assessee to explain the source for purchase of above property for an amount of Rs.4,10,57,276/-. The stamp duty authorities adopted the value of land at Rs.4,32,34,800/- and building value taken at Rs.12,27,000/- aggregating Rs.4,44,61,800/- as against

fair market value of the property or sale consideration paid by the assessee as per sale deed is Rs.3,75,00,000/-. Assessee objected vide letter dated 30.11.2018 for adopting value adopted by the stamp duty authorities and accordingly the matter was referred to the Valuation Officer for valuing the property. Considering all the evidences, valuation was done at Rs.4,16,66,000/-. Consequently, the ld. Assessing Officer asked assessee to explain through show cause notice dated 14.02.2020 as to why the differential amount of Rs.53,93,000/-(i.e Rs.4,16,66,000/- + Rs.12,27,000/- (-) Rs.3,75,00,000/-) should not be treated as income u/s 56(2) (vii) of the Act. The ld. Assessing Officer assessed 50% of the assessee's share to the returned income of the assessee under the head "income from other sources" amounting to Rs.26,96,500/- being differential amount being sale consideration recorded in the sale deed and value determined by the District Valuation Officer vide his valuation report dated 22.01.2020. Aggrieved, assessee preferred an appeal before CIT(A).

4. The ld. CIT(A) has not considered the basic difference of benefit of 15% valuation on DVO value. The ld. CIT(A) distinguished the case law of Hon'ble Supreme Court in the case of *C.B. Gautam vs. Union of India, (1993) 199 ITR 530 (SC)* by observing as under at para 11.3

"11.3 Firstly, in the case of Vimalchand (supra), the Hon'ble ITAT has referred to Sec.55A of the Act and opined that a relief may be provided up to 15% variation, whereas, it may be noted that as per section 55A of the Act, with a view to ascertaining the fair market value of a capital asset, the AO may refer the valuation of capital asset to a DVO in certain circumstances. In the instant case, the circumstance is that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf. In other words, on reading Sec.55A of the Act with Rule 111AA of the Income Tax Rules, 1962, the AO can make a reference to the valuation officer if the value of the asset as claimed by the appellant and the fair market value as per the AO's opinion differ and the difference is either more than 15% of the value of asset or more than Rs. 25,000, as the case may be. The Sec.55A of the Act only provides for the circumstances in which reference can be made to valuation officer and therefore, it cannot be said that the reference to valuation officer u/s.55A of the Act permit standard tolerance band of 15% in respect of difference between the purchase consideration and value determined by the Stamp valuation authority or the value determined by the DVO, as the case may be. Secondly, the Hon'ble ITAT, Chennai has not laid down any law that the tolerance band of 15%, as the case may be, can be used as standard deduction from the value determined by the Stamp valuation authority or the value determined by the DVO and the decision is applicable to the particular facts & circumstances of the specific assessee. Further, the Apex Court decision relied upon by the appellant in the case of C B Gautam (supra), is distinguishable from the facts of the case".

Even the ld. CIT(A) examined tolerance band of 10% with an intent to accommodate all such cases where the variation between stamp duty value and actual consideration received which could have occurred. The ld. CIT(A) finally held that in paras 11.7 to 11.10 as under:-

''11.7 On perusal of explanatory notes to the Finance Act 2018 & 2020, it is clear that the legislature has provided for tolerance band of 10% with an intent to accommodate all such cases where the variation between stamp duty value and actual consideration received which could have occurred in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location.

11.8 Further, the Hon'ble J & K High Court in Honest Group of Hotel (P) Ltd. vs. CIT (2002) 177 CTR J&K) 232, has held that difference upto 10% in the DVO's report and the amount shown by the assessee could be ignored. Accordingly, I am of the view that a tolerance band of 10% may be allowed in the difference between the Purchase Consideration paid by the appellant and the DVO's estimate of the value of property / Stamp Value determined, as the case may be.

11.9 However, it is pertinent to note that in in the instant case the difference between the purchase consideration paid by the appellant i.e., Rs. 3,75,00,000/- and the total value of the subject immovable property value i.e., Rs.4,28,93,000/- (the value determined by the DVO i.e., Rs.4, 16,66,000 & the value of the building as per stamp duty authority i.e., Rs 12,27,000/-) is Rs. 53,93,000/- and hence, the said difference is greater than 10%.

11.10 In view of the above facts & circumstances, I am of the considered opinion that the case of the appellant was beyond the tolerance limit of 10%, even by the virtue of following the ratio borrowed from provisions of Sec.56(2)(x) of the Act. Therefore, I hereby uphold the addition of Rs.26,96,500/- made by AO under the head income from other sources. Hence, the grounds of appeal no. 1 to 6 raised on this issue are dismissed''.

Aggrieved, assessee preferred an appeal before the Tribunal.

5. I have heard the rival contention and perused the material on record. The assessee before me contented that deemed consideration taken by the Ld. Assessing Officer exceeds the actual consideration only by 14% in view of DVO report. According to him, this is covered by the judgment of Hon'ble Supreme Court in the case of *C.B. Gautam (supra),* where it is suggested that variation upto 15% cannot be ignored. Ld. Counsel for the assessee stated that sale instance taken by the DVO for determining the fair market value which was comparable to the assessee's case in the first sale instance in relation to very small portion of land of 4800 sqft. which was naturally attract proportionally higher price. As regards second sale instance, the same is not comparable as it is located in Venkateshwara Colony, 14th Link Road, whose guideline value is Rs.6,600/- per sq.ft as against property purchased by the assessee measuring 5.147 grounds (12352.80 sq ft) that also in Kottivakkam Village previously Tambaram Taluk, presently Sholinganllur Taluk, Kancheepuram Dist. Hence, the above two instance given by the DVO cannot be comparable with the present property.

6. I have gone through the facts and circumstances of the case. The only issue remain for adjudication is difference in variation or

tolerance limit. The Hon'ble Supreme Court in the case of *C.B. Gautam (supra), had held as under:-*

> *21. The legislative history of Chapter XX-C, the stand taken by the Union of India and the Central Board of Direct Taxes as shown in the main counter affidavit and the affidavit of H.K. Sarangi, which has been filed after obtaining instructions from the Income Tax Department and the Central Board of Direct Taxes makes it clear that the powers of compulsory purchase conferred under the provisions of Chapter XX-C of the Income-Tax Act are being used and intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said Chapter apply, there is a significant under valuation of the property concerned, namely, of 15 per cent or more. If the appropriate authority concerned is satisfied that in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more it may draw a presumption that this under valuation has been done with a view to evade tax. Of course, such a presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of Section 269UD requires to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the Income Tax Act, namely, to counter attempts to evade tax.*
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> *22. The conclusion that the provisions of Chapter XX-C are to be resorted to only where there is significant under valuation of the immovable property to be sold in the agreement of sale with a view to evading tax finds support from the decision of this Court in the case of K.P. Varghese v. Income-Tax Officer, Ernakulam and Anr. : [1981]131ITR597(SC) . Section 52 in the Income-Tax Act, 1961, which has now been deleted, came up for consideration before a Bench comprising two learned Judges of this Court. Very briefly put that section provided that where a person acquired a capital asset from an assessee connected with him and the Income-Tax Officer had reason to believe that the transfer was effected with a view to avoid or reduce the liability of the assessee under Section 45 to the tax on capital gains and with that object that the transfer of the capital asset was being made at an under-value of not less than 15%, for the purposes of taxing the assessee, the full value of the consideration was taken to be its fair market value on the date of the transfer. It was pointed out by the Bench that Sub-section (1) of Section 52 did not deal with income to accrue*

or to be received, which in fact was never accrued and was never received. It sought to bring within the net of taxation only that income which has accrue or is received by the assessee as a result of the transfer of the capital asset and since it would not be possible for the Income-Tax Officer to determine possibly how much more consideration is received by the assessee than that declared by him, Sub-section (1) provides that the fair market value of the property as on the date of transfer shall be taken to be the full value of the consideration which has accrued or has been received by the assessee. The onus of establishing that the conditions of taxability are fulfilled is always on the revenue. In that case it was urged on behalf of the revenue that under the provisions of Section 52(2) once the Income-Tax Officer is satisfied that the condition of the consideration declared by the assessee in respect of the transfer is less by 15% or more than the fair market value, the capital gains can be computed on the footing that the fair market value was the consideration received by the assessee. This submission was rejected by this Court. It was pointed out that the submission would be justified only on a strict literal reading of Sub-section (2) of Section 52 but that such a construction could not be adopted. The Court observed that the task of interpretation of a statutory enactment is not a mechanical task. The famous words of Judge Learned Hand of the United States of America that ".... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning" were quoted with approval. After considering various authorities and the historical setting in which the provisions of the said Section were enacted, it was held that the fair and reasonable construction to put on the provisions of Sub-section (2) of Section 52 would be to so construe it that it would apply only when the consideration for the transfer is under-stated or, in other words, only where the assessee has actually received a larger consideration for the transfer than that what is declared in the instrument of transfer and it could have no application in the case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee {See page 606 of the Report).'

The deemed consideration taken by the lower authorities exceeds the actual sale consideration only by 14%. This is a negligible variation and the same does not warrant an addition as held by Hon'ble Supreme Court

in the case of C*.B. Gautham (supra*). Respectfully following the same, I delete the addition made by the lower authorities and hence this issue of the assessee's appeal is allowed.

7. Since I have decided the issue on merits in favour of the assessee, I need not go into jurisdictional ground, which has become academic.

8. In the result, the appeal of the assessee in ITA No.1245/CHNY/2023 for assessment year 2016-2017 stands allowed..

Order pronounced in the open court at the time of hearing on 20th day of February, 2024, at Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

चेन्नई/Chennai
दिनांक/Dated:20.02.2024.
KV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2.प्रत्यर्थी/Respondent 3..आयकर आयुक्त/CIT
4.विभागीय प्रतिनिधि/DR 5.गार्ड फाईल/GF